

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ILLINOIS UNION INSURANCE COMPANY)	CIVIL ACTION
as subrogee of CITY OF LAWRENCE)	
)	NO.04-10475 MLW
Plaintiff,)	
)	
v.)	
)	
THE VIKING CORPORATION)	
)	JURY TRIAL DEMANDED
Defendant.)	

THIRD AMENDED DISCOVERY CONFERENCE REPORT

Pursuant to Fed. R. Civ. P. 26(f), counsel for the parties have conferred regarding proposed amended discovery dates. The parties respectfully submit the following proposed third amended discovery plans.

(1) **Rule 26 Disclosure.** Plaintiff made its initial disclosure, under Rule 26(a)(1) on August 3, 2004. Defendant provided, or offered to provide, all information and documents required by the voluntary disclosures, in its responses to Plaintiff's interrogatories and request for the production of documents served on December 1, 2004.

(2) **Interrogatories and First Request for Production of Documents.** Defendant served its First Set of Interrogatories and its First Request for the Production of Documents to Plaintiff on January 12, 2005 and response and production was to be completed by February 28, 2005. Because the Plaintiff has experienced unanticipated difficulties obtaining all of the necessary information and/or documents to complete its response and production to such requests, the parties agreed that Plaintiff's response and production shall be completed on or before May 1, 2005. *See Amended Discovery Conference Report* dated April 25, 1005. Defendant received from Plaintiff supplemental responses to both the interrogatories and production of documents on April 29, 2005.

(3) **Depositions.** Defendant has taken the following depositions: (1) Kevin McCarthy, Director of Facilities, City of Lawrence Public Schools – July 27, 2005; (2) Gregory Hinchcliffe, Head Custodian, Gerard A. Guilmette School – July 28, 2005; (3) James A. Bizeur, City of Lawrence Fire Department – September 28, 2005; (4) John March, Deputy Chief, City of Lawrence Fire Department – September 28, 2005; and (5) Mary Lou Bergeron, Assistant Superintendent, City of Lawrence Public School – October 20, 2005.

On August 22, 2005, Defendant served a Rule 30(b)(6) subpoena *duces tecum* on the City of Lawrence Department of Public Works (“DPW”) and a subpoena *duces tecum* on Jeff Hamm, the insurance adjuster for Eastland Claim Service, Inc. Defendant has informed Plaintiff that it will not take the Rule 30(b)(6) deposition of the DPW or Mr. Hamm before they have produced documents in response to their respective document requests attached as Schedule A to their respective subpoenas. To date, Plaintiff has not served any notices of deposition on Defendant.

Because Defendant is unwilling to compromise its discovery rights in accordance with the Federal Rules of Civil Procedure, all remaining dates in this report shall each be amended and moved forward to give the parties sufficient time to meet each deadline. The parties represent that this extension will not prejudice any party and will aid in the just, speedy and inexpensive disposition of this action. *See* Fed.R.Civ.P Rule 1.

(4) **Amendment.** The parties agree the Complaint may be amended to add parties up to and include February 28, 2006. The parties agree that if the complaint or answer is substantially amended that the deadlines set forth herein may need to be reconsidered.

(5) **Fact Discovery.** Fact discovery be completed on or before February 28, 2006, except that Requests for Admissions may be filed up to and including June 2, 2006. Further, the parties believe, at this time, that they will not need to take more than 10 depositions each, exclusive of expert witnesses.

(6) **Experts.** Plaintiff's trial experts will be designated and preliminary disclosure of information contemplated by Fed. R. Civ. P. Rule 26, for the purposes of mediation shall be provided no later than March 17, 2005, and designation and disclosure be made by the defendant no later than May 5, 2006. In the event that this matter is not resolved through mediation, the parties will serve final expert reports consistent with the requirements of Fed. R. Civ. P. Rule 26 on or before June 30, 2006.

(7) **ADR/Mediation.** ADR/Mediation, either through the court sponsored program or a private mediator, will be completed on or before June 2, 2006.

(8) **Expert Depositions.** All expert depositions shall be completed on or before August 18, 2006.

(9) **Dispositive Motions.** All dispositive motions shall be filed on or before September 15, 2006.

(10) On February 15, 2005, this Court entered an Order concerning the process to preserve the confidentiality of certain information as stipulated and endorsed by the parties.

Respectfully submitted,

Plaintiff Illinois Union Insurance Company
as subrogee of City of Lawrence,
By Its Attorneys,

/s/ James P. Cullen, Jr. (with permission)
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Dated: November 22, 2005

Respectfully submitted,

Defendant Viking Corporation
By Its Attorneys,

/s/ Gina M. McCreadie
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Dated: November 22, 2005

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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2005, a true and correct copy of the *Third Amended Discovery Conference Report* was served upon the attorney of record for each party registered for electronic notification via the Court's electronic filing system and via first class mail on the following:

Patrick J. Loftus, III
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Suite 500
Boston, MA 02108

/s/ Gina M. McCreadie
Gina M. McCreadie